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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,629	02/20/2004	Timothy M. Johns	02100.0082	4131
22852	7590	07/05/2006		EXAMINER
				YEAGLEY, DANIEL S
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/781,629	JOHNS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel Yeagley	3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 April 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-52 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19, 20, 34, 35 and 40 – 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 19 and claim 34, lines 6 and 7; respectively, the terms “the second lever member” still lacks proper antecedent basis.

Regarding claim 40, the term “the structure tongue” still lacks antecedent basis.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 18, 21 – 33 and 36 – 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Wohldorf ‘310.

Wohldorf discloses a vehicle hitch mechanism which includes a lifting system *capable* of coupling a structure 12 to a vehicle, wherein the hitch mechanism comprises a first linkage mechanism *for* linking a first handle member and a coupling member 7, such that the first handle member is *capable* of being moved to raise and lower the coupling member (figure 1 and 2),

wherein Wohldorf further shows the prior art of a lifting system having a (intermediate) linkage mechanism *for* linking a handle member and a raise/lower member 2, such that the handle member 8 of the lifting system is *capable* of being moved to raise and lower the raise/lower member, wherein a control 5 moves the raise/lower member from one position to an other position (figure 1 and 2), wherein Wohldorf vehicle hitch mechanism and dolly structure are capable of performing the method comprising positioning the raise/lower member of the lifting system which is attached with at least one of the hitch mechanism and vehicle underneath a tongue 12 in a lower position (figure 2), wherein the member is *capable* of engaging and supporting the tongue, wherein the raise/lower member is capable of being raised to an upper position (figure 1) which is capable of raising the tongue and positioning the coupling member 7 proximal to the tongue so that the tongue is capable of aligning with the hitch mechanism and would enable the coupling member to engage an opening 13 of the tongue by an insertion of the coupling member into the opening of the tongue as claimed, such that movement of a handle member outward (down away) from a vehicle moves a second linkage mechanism in a downward direction (figure 2) and movement of the handle member in a direction inward (upward) toward the vehicle moves the second linkage in an upward direction to raise the raise/lower member (figure 1), wherein the hitch mechanism includes a biasing member being a spring with a first and second end, and a handle member (upper portion of 8) capable of being moved to raise and lower a coupling member and a pin which is linked by a linkage mechanism to the handle, wherein the hitch mechanism further includes a raise/lower member 2 comprised of a plurality of leg portions (sides of 2) attached to a horizontal member (base of 2) attached to a second linkage mechanism (intermediate mechanism) comprised of at least a link member that

includes a pair of linkage bars (sides of element 1) which are provided with an opening proximal to the lower end and attached to the raise/lower member by a second bolt and nut (shaft/pin 3), wherein the raise/lower member is capable of being slid under and engaging and supporting a structure that is capable of being coupled with the hitch mechanism and includes a first and second lever member provided with an opening (base portion of element 10') and attached with the horizontal member, wherein the second linkage mechanism is linked to a handle member (control; lower portion of element 8) which is capable of being moved to raise and lower the raise/lower member, such that the second handle member and has an opening attached with the second linkage mechanism that includes at least one link member comprising a pair of linkage bars 10' that are provided with openings proximal to an upper end and includes an attachment mechanism (bolt and nut (shaft /pin 9')) attached to the second handle through openings in linkage bars and handle member, wherein the raise/lower member comprises the method of being positioned underneath a tongue having an opening for engaging a coupling member, such that when the coupling member is raised so that the opening of the tongue exits the coupling member with the raise/lower member being underneath the tongue, such that when the tongue moves in a direction away from the vehicle would lower the tongue along the raise/lower member to a point where the raise lower member would no longer be positioned underneath the tongue as broadly claimed.

***Allowable Subject Matter***

5. Claims 19, 20, 34 and 35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 4/10/06 have been fully considered but they are not persuasive. In response to applicant's argument that Wohldorf does not teach each and every element of applicants claimed invention, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is *capable of* performing the intended use, then it meets the claim. Wohldorf discloses the prior art of a hitch mechanism with a linkage mechanism linking a handle member and a coupling member, wherein a handle member is clearly capable of being moved to raise and lower the coupling member and is further indicated by applicants figure 1 as being old in the art, and Wohldorf further discloses a lifting system in connection with the hitching mechanism which includes a linkage mechanism (intermediate mechanism), wherein a handle member of the lifting system is clearly *capable of* being moved to raise and lower a raise/lower member 2 as broadly claimed, and wherein the lifting system further includes a control which is clearly *capable of* causing movement of the raise/lower member as claimed. Such that the hitch mechanism and lifting system of Wohldorf is clearly capable of performing the method as broadly claimed.

***Conclusion***

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7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Frendsen et al '220, Benjamin et al '168 and Nelson '987 show a hitching mechanism with a lifting system.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.

  
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